TRADE COMBINATIONS IN CANADA

The growing tendency of corporations to seek to avoid the disastrous effects of unregulated competition, by means of some form of agreement or combination among themselves, has rendered the question of government regulation of these bodies imperative. Until a comparatively recent period such combinations could be prosecuted in courts of law only under the common law which declares unlawful any combinations in restraint of trade as being contrary to public policy, and makes void any agreements for this purpose. Owing to the many conflicting interpretations of this law, and to the fact that, of course, no penalty was attached to its violation, the public were practically unprotected against the actions of these combinations, which often possessed unlimited power in their special spheres, with regard to the control of the means of production and distribution of the commodities in which they dealt.

Various laws have been enacted in Canada from time to time for the purpose of setting due bounds to the operations of trade combinations and of more accurately defining the interpretation of the common law with regard to restraint of trade. The purpose of the present article is to discuss this legislation, and to indicate the extent to which it has been of use in combating the evils to which such combinations have given rise.

By the British North America Act of 1867 the regulation of trade and commerce is expressly placed under the jurisdiction of the Federal Parliament. All legislation relating to trusts and combines has accordingly been enacted by the central government.

The first time reference was made in Canadian legislation to combinations in restraint of trade was in the Trade Union Act of 1872, embodied in the Revised Statutes of 1886, which declared that the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render members liable to prosecution for conspiracy, or to render void any agreement or trust. This follows closely the wording of the British Trade Union Act of 1871.

The next legislation dealing with trade combinations was passed in 1889, when it was declared unlawful for any person to conspire or agree with any other person or with any transportation company—

a) Unduly to limit the facilities for transporting, producing, manufacturing, or dealing in any article of trade or commerce; or

b) To restrain or injure trade or commerce in relation to any such article; or

c) Unduly to prevent, limit, or lessen the manufacture or production of any article; or

d) Unduly to prevent or lessen competition in the production, manufacture, purchase, sale, transportation, or supply of any article of commerce.

The penalty for offenses against this act was fixed at a fine of not more than $4,000 or less than $200, or imprisonment for not more than two years for an individual, and a fine of from $1,000 to $10,000 for a corporation. The Trade Union Act of 1886 declared that the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed unlawful, but the provisions of the Act of 1889 dealing wtih combinations in restraint of trade were to be construed as if this section of the Trade Union Act were non-existent.

In the Criminal Code of 1892 a conspiracy in restraint of trade is defined to be an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade, and every person is declared guilty of an indictable offense who conspires, or agrees with any other person or transportation, unlawfully to perform any of the acts mentioned in the Act of 1889, which is quoted above. The purposes of a trade union are again declared not to be unlawful by reason merely that they are in restraint of trade, within the meaning that "no prosecution shall be maintainable against any person for conspiracy in refusing to work with or for any employer or workman, or for doing any act or causing any act to be done for the purpose of a trade combination, unless such act is an offense punishable by statute.

It was discovered that there was a great difficulty in securing convictions under this act, for the reason that the prosecution was compelled to show that there was an unlawful conspiracy, and in the Criminal Code of 1900 a clause was therefore substituted in which the word "unlawfully" was omitted, with the result that all combinations unduly to restrain trade were made indictable offenses. The burden of proof was thrown on the defendants.

The most noteworthy applications of this legislation were made within the last year, when legal proceedings were instituted against

the Master Plumbers' Associations of Toronto and Hamilton, a number of wholesale firms dealing in plumbers' supplies under the name of the Central Supply Association of Canada, and the Toronto Union of Journeymen Plumbers. On April 13, 1905, Mr. J. A. Berridge, a master-plumber of Toronto, instituted criminal proceedings against the firm of James Robertson & Co. for refusing to sell him certain plumbing supplies required in his business. A decision having been given at the preliminary hearing that the charge could not be laid against the company, in the following month an employee of the company was charged with the offense. Sufficient evidence was adduced to show the existence of a combine in restraint of trade in plumbers' supplies, and the case was referred by the police magistrate to the grand jury for trial.

Criminal proceedings were subsequently instituted by Crown Attorney Curry against the Master Plumbers and Steamfitters' Association and the Central Supply Association. During the trial a large amount of sensational evidence was adduced, which led to the conviction of the two associations, and they were sentenced on December 8 to pay a fine of $5,000 dollars each. Directly after the conclusion of this case, four individual members of the Master Plumber's Association were placed on trial charged with conspiracy with the local union of journeymen plumbers. They pleaded guilty, and on the following day were fined various sums ranging from $250 to $500. Fines were at the same time imposed on three other master-plumbers on the charge of conspiring with other members of their Association.

In summing up the evidence, the trial judge found that the two incorporated associations who were defendants in this suit were direct successors of associations which had entered into a criminal combine as early as 1902, an understanding having existed between them prior to the written agreement of 1903. This agreement was in force until October 26, 1904, when it was abrogated by the Plumbers' Association. According to the agreement, members of the Supply Association were to give a commission of 5 per cent. to the Plumbers' Association on all goods sold to non-members, and a commission of 7½ per cent. on all purchases by members of the association.

When public tenders were called for, the evidence produced at the trial showed that it was the practice of the association for the members to arrange among themselves the amount of the lowest

tender which would be put in, and the firm which should make this tender. Other tenders would be submitted, all of which were higher than the one agreed upon, in order to make a display of competition and at the same time to procure the carrying out of the arrangement among themselves. The tenders were made sufficiently high to provide for a bonus to be paid to the other members of the Association.

In the agreement between the Master Plumbers' Association and the trade union, the former consented to employ none but members of the union, in consideration of which the latter agreed, whenever requested by the association, to call out their members employed by master-plumbers outside of or at variance with it.

All the other members of the Master Plumbers' Association were subsequently prosecuted on similar charges of conspiracy, and, on their entering a plea of "guilty," sixty-eight were allowed to go on suspended sentence, and thirty-eight were fined to an aggregate amount of $10,200.

A similar prosecution of master-plumbers was commenced on November 30, at Hamliton, which resulted in the conviction of fourteen members of the association of that city in the month of March. The evidence brought forward was very much the same as that produced at the trial of the Toronto plumbers.

Proceedings were also instituted last November against the Dominion Wholesale Grocers' Guild at Hamilton, as the result of a statement made before the Tariff Commission which had been holding sessions at that place, to the effect that the Grocers' Wholesale, Limited, had been refused goods by the Redpath Sugar Refining Company, on the ground that the latter's output was controlled by the guild. This case is still before the courts.

An interesting development of these prosecutions was the sending of a deputation by the Wholesale Grocers' Guild to petition the Dominion government to alter the law against combinations by striking out the word "unlawfully" and defining the meaning of the word "unduly," where it occurs in the section of the Criminal Code of 1900, under which the proceedings against them were instituted. The arguments advanced by the guild were to the effect that collective action among the grocers was found necessary in order to obtain a fair profit, owing to the severe competition in the trade from departmental stores and dishonest retailers who did not scruple to sell below cost, but under the law as it stands, if any merchants unite to secure a fair margin of profit, they expose themselves to the risk of being charged with violating the criminal law.

It was further pointed out that unhealthy trade conditions cannot be ameliorated by individual effort, and that railway companies, telegraph companies, and insurance companies fix their rates by collective action; that physicians regulate their fees by collective action; that lawyers call legislation to their aid to secure reasonable remuneration for their work; and that trade unions are authorized by law to combine to secure reasonable wages.

The provisions of the Criminal Code of 1892 were found to be insufficient, owing to the difficulty commonly met with in obtaining sufficient evidence against combines to warrant a trial, on account of the secrecy of their proceedings. To meet this drawback, an article was inserted in the Customs Tariff Act of 1897, providing that—

> Whenever the Governor in Council has reason to believe that with regard to any article of commerce there exists any trust, combination, association, or agreement of any kind among manufacturers of such article, or dealers therein, to unduly enhance the price of such article, or in any way to unduly promote the advantage of the manufacturer or dealers at the expense of the consumers, the Governor in Council may commission or empower any judge of the Supreme Court or Exchequer Court of Canada, or of any Superior Court of Canada, to inquire in a summary way into and report to the Governor in Council whether such trust, combination, association, or agreement exists.
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> 2. The judge may compel the attendance of witnesses and examine them under oath, and require the production of books and papers, and shall have other necessary powers such as are conferred upon him by the Governor in Council for the purpose of such inquiry.
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> 3. If the judge reports that such trust, combination, association, or agreement exists, and if it appears to the Governor in Council that such disadvantage to the consumer is facilitated by the duties of customs imposed on a like article, when imported, then the Governor in Council shall place such article on the free list, or so reduce the duty on it as to give to the public the benefit of reasonable competition in such article.

This act was put into operation in 1901 for the first time, when a royal commission was issued to Hon. Taschereau, justice of the Superior Court of Quebec, to inquire into the allegations made by the Canada Press Association in a petition to the minister of finance, that there existed a combine among Canadian paper manufacturers, the effect of which was unduly to enhance the price of news- and printing-paper, contrary to section 18 of the Customs Tariff Act of 1897.

The commissioner found, from the evidence produced at the sittings of the commission, that a combination of paper-makers existed

under the name of the Paper Makers' Association, which unduly enhanced the price of paper, at the expense of the consumers, and that this combination was illegal, not only under section 18 of the Customs Tariff Act, but also under section 520 of the Criminal Code. As a result of the report submitted by the commissioner, an order in council was passed reducing the duty on news printing-paper in sheets and rolls, including all printing-paper valued at more than 2½ cents per pound, from 25 per cent. to 15 per cent. *ad valorem*. It is needless to say that the Paper Makers' Association thereupon ceased to exert any control over the price of printing-paper in Canada, to the disadvantage of the consumers.

A few years later another trust was discovered, which, although effectively preventing competition, could not very well be reached through the existing laws. This time the trouble was in the tobacco trade. In August, 1904, the attention of the Dominion government was directed by a deputation of wholesale grocers to the practice followed by certain tobacco manufacturers of making exclusive contracts with the wholesale dealers, by which the latter agreed not to purchase any tobacco from rival manufacturers. These contracts had been signed by the principal wholesale dealers throughout the country in favor of the American Tobacco Company and the Empire Tobacco Company. The latter firm has since been alleged to be a branch of the American Tobacco Company. At the time when the contracts were first presented to the wholesale houses, such a large percentage of the trade was already in control of this company that the whoelsalers in their own interests were compelled to sign them, as a refusal to do so would involve a serious loss of trade.

Owing to the fact that tobacco manufacturers are obliged by law to hold licenses from the Department of Inland Revenue to carry on their business, it was possible to destroy the tobacco trust by declaring their licenses forfeited, and a law amending the Inland Revenue Act was immediately passed along these lines, containing the following provisions:

> The Minister of Inland Revenue may declare forfeited any license authorized by this act in any case where a person who, being a manufacturer of any class of goods subject to a duty of excise, either directly or indirectly—
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> *a*) Makes a sale of any such goods, or consigns them for sale upon commission, to another person, subject to the condition that the purchaser or the consignee shall not sell or deal in goods of a like kind produced by, or obtained or to be obtained from, any other manufacturer or dealer; or

b) Makes a sale of any such goods, or consigns them for sale upon commission, to another person, upon such terms as would, in their application, give more profit to the purchaser or the consignee if he should not sell or deal in goods of a like kind produced by, or obtained or to be obtained from, any other manufacturer or dealer;

And the collector of inland revenue shall thereupon cause a notice of such forfeiter to be forthwith inserted in the *Canada Gazette,* and from and after the insertion thereof the license shall be null and void; and no new license shall be granted to such person, and no license shall be granted to any other person for carrying on any business in the premises occupied by him until the Minister of Inland Revenue is satisfied that the dealings above referred to have ceased.

2. The decision of the Minister of Inland Revenue as to whether any sale or consignment of goods is, or is not, subject to any such conditions, or upon any such terms, as is or are defined in subsection 1 of this section, shall be final.

This act became a law on August 10, 1904, and in the following month notice was given to the American Tobacco Company and the Empire Tobacco Company by the Department of Inland Revenue that they were required to abandon their system of exclusive contracts, under the penalty of the cancellation of their licenses. The contracts were thereupon immediately canceled, and the effectiveness of the law is shown in the large number of new brands of tobacco which have been placed on the market during the present year.

This brief sketch of the operations of trusts and combines in Canada, and the method of dealing with them adopted by the Dominion government shows that, Canadian legislation, so far as it goes, has proved of great practical service in putting an end to unfair competition in a variety of forms. Combinations of employers, even if they embrace all establishments in a particular industry, and are therefore practically monopolies, are not forbidden by law, provided that they do not encroach on the rights of others, or do not otherwise act contrary to the public welfare. In fact, the formation of associations of employers according to their trades has developed greatly in Canada in recent years—a tendency which has been likewise manifest in the United States, England, and other countries. According to statistics recently compiled by the Department of Labor of Canada, there are at present 220 employers' associations, of which no less than 84 were formed during the past five years. Should any individual, however, find his business unfairly hampered by any

one of these associations, or should a consumer find himself prevented from making his purchases at reasonable rates, ample means of redress lie ready at his hand in the shape of existing laws, and no person has cause to dread the effects of unjust discrimination or unfair intimidation, for which no remedy can be found.

WILLIAM WILKIE EDGER